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Wm. H. Werth, of Tazewell, for plaintiff in error.
Chapman, Peery & Buchanan and *A. S. Higginbotham*, all of Tazewell, for defendants in error.

ROLLER *v.* ARMENTROUT.

Nov. 11, 1915. Rehearing Denied Nov. 26, 1915.

[86 S. E. 906.]

1. Adverse Possession (§ 13*)—Acquisition of Title—Character of Possession.—Where defendant's grantor lived on the land, had other buildings, had fruit trees and parcels cultivated in vegetables, and portions of the land were cleared, and the whole of it was grazed, and nearly all of it fenced, and her dominion was notorious and recognized by the countryside, and under color of title, her possession was all that is required for adverse possession.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 65, 67-76; Dec. Dig. § 13.* 1 Va.-W. Va. Enc. Dig. 200.]

2. Adverse Possession (§ 71*)—Color of Title—Description of Land—Certainty.—Although a deed to defendant's grantor does not describe the land by metes and bounds, it is sufficient to give color of title where the tract was well known by name and boundaries, so that it might be identified.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 415-429; Dec. Dig. § 71.* 1 Va.-W. Va. Enc. Dig. 206.]

3. Adverse Possession (§ 100*)—Acquisition of Title—Character of Possession.—Where defendant's grantor did not actually occupy as residence the land claimed by adverse possession, but occupied by the necessary character of possession an adjoining tract, title by adverse possession to the claimed tract, if held under color of title, will arise.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 547-574; Dec. Dig. § 100.*]

4. Adverse Possession (§ 60*)—Hostile Character—Requisites.—Although one claiming land by adverse possession received it, together with other heirs, as intestate property, that fact will not prevent her asserting her claim for herself as against a stranger to the family, although she also held as a representative of her coheirs.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 282-312, 323, 328; Dec. Dig. § 60.* 1 Va. W. Va. Enc. Dig. 205.]

5. Taxation (§ 761*)—Tax Deeds—Recitals.—A tax deed failing to set forth the circumstances in relation to the sale as to a report of the sale or confirmation by the court is fatally defective under Code 1904, § 655, requiring that the deed shall set forth all the circumstances appearing in the clerk's office in relation to the same.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1509, 1510-1513; Dec. Dig. § 761.* 13 Va.-W. Va. Enc. Dig. 169.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Taxation (§ 764*)—Tax Deeds—Contents—Description.—A tax deed failing to set forth the description of the property by metes and bounds is fatally defective, since Acts 1845-46, c. 6, § 6, requires that the clerk making the deed shall specify the metes and bounds of the land and the names of owners of adjoining tracts.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1519-1522; Dec. Dig. § 764.* 13 Va.-W. Va. Enc. Dig. 169.]

7. Records (§ 18*)—Destruction—Title to Land—Evidence—Sufficiency.—Evidence held to show conveyance by former owner of land prior to conveyance under which plaintiff claims in spite of the destruction of records during the Civil War.

[Ed. Note.—For other cases, see Records, Cent. Dig. §§ 36-42; Dec. Dig. § 18.* 11 Va.-W. Va. Enc. Dig. 693.]

8. Wills (§ 742*)—Conveyance by Devisees—Title of Grantors.—Where plaintiff claims title by deed from three of five children, who took under a will not specifically naming the property which would therefore pass under a residuary clause, the title is defective, since all the children did not join in the conveyance.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1900-1906; Dec. Dig. § 742.* 13 Va.-W. Va. Enc. Dig. 885.]

ROLLER v. CATLETT.

Nov. 11, 1915. Rehearing Denied Nov. 26, 1915.

[86 S. E. 909.]

1. Trusts (§ 169*)—Trustees—Substitution of Trustee.—Acts 1910, c. 355, providing that the court, on the death, removal, declination, or resignation of a trustee, may appoint a trustee or trustees in place of the trustee named in the instrument, applies only where the powers of the trustee are not discretionary or dependent upon personal confidence, but the application of the statute does not depend upon whether the trustee has the legal title to the trust property.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 222-224; Dec. Dig. § 169.*]

2. Judgment (§ 714*)—Res Adjudicata—Defenses—Validity.—The defense of res adjudicata is not available to one in whose favor the former judgment ran as to seven thirtieths of a given property, where the instant action involves the other twenty-three thirtieths of the property.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1240, 1242, 1243; Dec. Dig. § 714.*]

3. Judgment (§ 689*)—Res Judicata—Conclusiveness.—A judgment in a former action on the same subject-matter between the defendant

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.